

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Friday, June 8, 2006 – 1:00 p.m. – Room W125 House Building

**Members Present:**

Mr. Kevin J. Worthen, Chair  
Judge Jon M. Memmott, Vice Chair  
Rep. Sheryl L. Allen  
Rep. Ralph Becker  
Rep. LaVar Christensen  
Sen. Mike Dmitrich  
Sen. Peter C. Knudson  
Mr. Morris D. Linton  
Mr. Roger Tew  
President John L. Valentine

**Members Absent:**

Chief Justice Christine Durham  
Mr. Byron L. Harward  
Mr. Michael Petersen  
Mr. Robin Riggs  
Ms. Kristine Strachan

**Staff Present:**

Mr. Robert H. Rees, Associate General Counsel  
Mr. Jerry Howe, Policy Analyst  
Ms. Brooke Ollerton, Legislative Secretary

**Note:** A list of others present, copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Commission Business**

Chair Worthen called the meeting to order at 1:18 p.m.

**MOTION:** Mr. Morris Linton moved to approve the minutes of the February 3, 2006 meeting. The motion passed unanimously with President Valentine absent for the vote.

**2. Review of HJR 8, "Resolution Revising Executive Officer Succession Provisions"**

Mr. Rees updated the Commission on the progress of H.J.R. 8 in the 2006 General Session. He explained that it passed in the House, was amended in a senate committee, and died on the senate board the last night of the session.

Rep. Allen added that the senate amendment on line 85 concerned the appointment of a lieutenant governor by the governor. She explained that the Commission recommended that both the House and Senate concur on the appointment. However, the Senate amended the House out of the provision. She stated that she would like to see this bill introduced again and that it would be helpful to address which bodies would be included in the confirmation process. She thanked the Commission for its work on this issue.

Chair Worthen thanked Rep. Allen for her work in sponsoring H.J.R. 8.

President Valentine pointed out that the Senate's major issue with the bill was that the appointment process was not consistent with other appointments throughout the Utah Constitution. He encouraged more discussion on the issue and said that it had the greatest chance of passage if left as amended by the Senate.

Due to a lack of a quorum, Chair Worthen moved to the next agenda item.

The Commission returned to H.J.R. 8 after considering agenda item 3.

**MOTION:** Sen. Valentine moved to recommend that the legislature adopt H.J.R. 8, as amended on line 85. The motion passed with Rep. Becker voting in opposition.

Rep. Becker said that the Commission's recommendation should remain unchanged.

Rep. Allen said the legislature respects the Commission's recommendations and that it would be a good idea to have a politically viable version of the bill available in case a special session was called.

Sen. Dmitrich said that during the last session this issue was not debated at length in the Senate so the Commission could feel free to take whatever position it deemed appropriate.

### **3. Reconsideration of Bills Vetoed Before Adjournment Sine Die, Article VII, Sec. 8**

President Valentine gave a brief history of the issue, explaining that during the 2006 General Session, the governor vetoed a bill with sufficient time for an override. As the house of origin, the Senate was therefore required to reconsider the vetoed bill, although it was not immediately clear whether the non-originating house was under a similar obligation. This occurs, he said, only when a bill is vetoed before the last ten days of the session. He explained that the Senate was uncomfortable reconsidering a vetoed bill without first meeting with the House.

Chair Worthen asked for an explanation of the requirement to reconsider in Article VII, Sec. 8 of the Utah Constitution and wondered if it meant that a vote was required.

President Valentine said, referring to the memorandum in the mailing packet, "Required Action of the Originating and Non-originating House When a Bill is Vetoed Before Adjournment Sine Die," that the Senate was required to vote on whether or not to override the veto.

Mr. Howe said that two distinct veto override procedures are required under the current provisions of the constitution, each depending on when the veto occurs. If the veto occurs after the legislature adjourns *sine die*, then each house polls their respective members to determine if the vetoed bill will be reconsidered. When a bill is vetoed before the legislature adjourns *sine die*, however, the originating house is required to reconsider the bill, but the non-originating house has no such obligation. Whatever the policy objective is that justifies the originating house to reconsider a vetoed bill, he said, is evidently insufficient to require the non-originating house to reconsider the vetoed bill, and simply does not apply to either house on bills that are vetoed after the legislature adjourns *sine die*.

President Valentine said that there is no conceivable reason that the reconsideration procedure of vetoed bills should not be the same, whether or not the bill is vetoed during or after session.

Chair Worthen reviewed recommendations for changes to Article VII, Sec. 8 in the memorandum and said that the Commission would discuss the issue further in the next meeting.

#### **4. Rulemaking Power of Supreme Court, Article VIII, Sec. 4**

Mr. Howe referred the Commission to Article VIII, Sec. 4 of the Utah Constitution, which was included in the mailing packet, and explained that the rulemaking power for both procedure and evidence is given primarily to the Utah Supreme Court. The legislature is given authority to amend those rules by a two-thirds vote of both houses.

President Valentine pointed out that there is natural tension between the two branches when making changes to rule. He said that a constitutional amendment may be needed to decide which branch has authority over amended rules of procedure and evidence.

Justice Ronald Nehring, Utah Supreme Court, stated his view that tension between the two branches is inevitable and that it would be impossible to craft an amendment or statute with clean divisions between branches with respect to their operations. He talked about the evolution of rulemaking in the courts and described collaboration between the legislature and the judicial branch on rulemaking. He answered questions from the Commission about court rule changes and the two-thirds vote requirement.

Mr. Tew opined that changes to the Utah Constitution could be avoided if there was more informal cooperation throughout the rulemaking process.

Justice Nehring said tension will always exist, but that most of the work to be done would be in informal meetings where legislators and the courts could discuss differences, stressing the value of collaboration and communication.

Mr. Rick Schwermer, Administrative Office of the Courts, said some of the best legislative-judicial collaboration has occurred during the formation of rules, with staff from the Office of Legislative Research and General Counsel and the Judicial Rules Review Committees.

Mr. Dave Gessel, Utah Hospitals and Health Systems Association, explained that the legislature passed 2006 General Session S.B. 41, 1st Substitute, "Restrictions on Use of Physician Disclosures," by the required two-thirds majority, which he believed amended the rule of evidence. Article VIII, Sec. 4 allows the legislature to amend the rules of evidence by a two-thirds vote.

The Commission discussed whether the rules may be amended by statute or whether the rules can be amended only by resolution.

Judge Memmott explained the history of the courts' authority to adopt rules and the legislature's authority to amend them.

Pres. Valentine said that the form of legislative action amending the rules of evidence was not as important as its content. He suggested that Mr. Gessel should approach the court and ask it to consider changing the rules of evidence as it relates to physician apologies to make them consistent with what's been passed by the legislature.

Sen. Dmitrich said that after listening to the discussion, he did not believe a constitutional amendment would solve this issue, but that a joint effort between the judicial branch and the legislature may be the only solution.

**5. Discussion of SB 189, "Constitutional Revision Commission Amendments" 2006 General Session (P. Knudson)**

This item was not discussed.

**6. Other Items / Adjourn**

Chair Worthen announced that next meeting was scheduled for Thursday, August 10, 2006 at 10:00 a.m. He adjourned the meeting at 3:15 p.m.